

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

LAND AIR EXPRESS, INC.

and

CASES 1-CA-39464
1-CA-39951

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 404, AFL-CIO

LAND AIR EXPRESS, INC.

and

CASE 1-RC-21404

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 404, AFL-CIO

Karen E. Hickey, Esq.
Joseph F. Griffin, Esq.
of Boston, Massachusetts
for the General Counsel
Peter J. Quist, Esq.
of Burlington, Vermont
for the Respondent

DECISION

Statement of the Case

WALLACE H. NATIONS, Administrative Law Judge. This case was tried in Northampton, Massachusetts on June 11, 12, 13, 14 and July 23, 2002.¹ International Brotherhood of Teamsters (herein called the Union) filed a charge on October 31, 2001 in Case 1-CA-39464 and a Complaint issued against Land Air Express, Inc. (herein called Respondent or Land Air) on February 28, 2002. The Union filed a Petition in Case 1-RC-21404 and a Notice of Hearing on Objections and an Order Consolidating Cases issued on March 8, 2002. An amended charge in Case 1-CA-39464 was filed by the Union on February 6, 2002. The charge in case 1-CA-39951 was filed by the Union on May 7, 2002. The first amended charge in Case 1-CA39951 was filed by the Union on May 9, 2002. The second amended charge in Case 1-Case-39951 was filed by the Union on May 23, 2002. A Second Order Consolidating Cases, Amended Consolidated Complaint and Further Notice of Hearing issued May 29, 2002. Respondent filed an Answer to the Complaint admitting the jurisdictional allegations and titles and supervisory status of its management. It also raised several affirmative defenses. In light of my decision with regard to the facts in this proceeding, it is unnecessary to deal with those defenses.

¹ All dates are in 2001 unless otherwise noted.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the Respondent and General Counsel, I make the following

Findings of Fact

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I. Jurisdiction

The Respondent, a corporation, with an office and place of business in Williston, Vermont and a terminal in Springfield, Massachusetts, has been engaged in interstate trucking. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

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II. Alleged Unfair Labor Practices

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The Complaint alleges the following persons hold the position listed next to their name and are supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

20	William Spencer	President
	Mac Savage	Vice President of Operations
	James Walpole	Former Terminal Manager
	Don Hemenway	Present Terminal Manager
	Christine Moore	Office Manager
25	Todd Bailey	Supervisor
	Mike Roulston	Supervisor

The Complaint alleges that Respondent has violated Section 8(a)(1) of the Act by:

- 30 1. About May 8, 2001, by Hemenway, at the Springfield facility, threatening employees with unspecified reprisals if they selected the Union as their collective-bargaining representative.
2. In about June 2001, by Hemenway, at the Springfield facility:
 - 35 a. prohibiting employees from talking about the Union; and
 - b. threatening employees with discharge for talking about the Union.
3. About July 10, 2001, by Spencer, at the Springfield facility:
 - 40 a. creating an impression among its employees that their union activities were under surveillance by Respondent;
 - b. telling employees that it would be futile to select the Union as their collective-bargaining representative at the Springfield facility;
 - c. promulgating a rule against talking about the Union at the Springfield facility;
 - 45 d. interrogating employees about their union membership, activities and sympathies.
4. About July 10, 2001, by Hemenway, at a Walgreen's drug store in the Springfield, Massachusetts area, creating an impression among its employees that their union activities were under surveillance by Respondent.
- 50 5. About August/September, 2001, by Walpole, at the Springfield facility, telling employees that Spencer would rather close the company than let the Union become

the collective-bargaining representative at the Springfield facility.²

6. About August 2, 2001, by Bailey, at the Springfield facility, threatening employees with arrest if certain employees or Union representatives came onto Respondent's property.
7. About August 9, 2001, by Hemenway, at the Springfield facility, in the presence of an employee, threatened a Union employee, by telling the employee to watch his back.
8. In about October 2001, by Spencer, at the Springfield facility, threatened employees with an end to wage increases.
9. About October 16, 2001, by Hemenway, at the Springfield facility, threatened employees with loss of wages and benefits if the Union became the employee's collective-bargaining representative.
10. Since about April 11, 2002, by Roulston, at the Springfield facility has engaged in a course of conduct to harass its employees by:
 - a. Telling them they could no longer remain at the terminal until the end of the time period in which they are normally allowed to perform pre-trip duties;
 - b. Engaging in surveillance of employees;
 - c. Refusing to give employees directions to customers
11. About April 22, 2002, by Hemenway, telling employees they were fired.
12. About April 29, 2002, by Hemenway, at the Springfield facility telling employees they could not contact the Union regarding work related problems.
13. About May 3, and May 6, 2002, by Hemenway, unlawfully interfering with the vindication of employee rights under the Act by telling employees they could not have time off to testify at an NLRB hearing.

Respondent is alleged to have violated Section 8(a)(1) and (3) by:

1. About June 30, 2001, issuing a warning to its employee Peter Goodreau.
2. About June 29, 2001, issuing a warning to its employee Peter Goodreau.
3. About July 3, 2001, suspending its employee Peter Goodreau.
4. About July 11, 2001, placing its employee Michael Krutka on full workers' compensation and removing him from his light-duty work assignment.
5. About July 17, 2001, terminating its employee Michael Krutka.
6. About July 18, 2001, terminating its employee Peter Goodreau.
7. About April 24 and April 26, 2002, reducing the work hours of its employee Michael, Krutka.

There are two objections to the election still pending. One is that the Respondent engaged in electioneering at the polls and the other is that Respondent threatened and did cancel existing benefits by stating that the employer would bargain from scratch.

This proceeding involves allegations of violations of the Act around the time of and subsequent to an organizing effort by the Union among Respondent's employees at its Springfield, Massachusetts terminal. As the reader of this decision will discover, one side or the other in this case is attempting to sell a major lie. I am convinced that it is the Union and for reasons I will detail throughout this decision, do not credit any testimony adduced by General Counsel that conflicts with that adduced by Respondent. I will find based on the credible evidence of record that no violations of the Act were committed by Respondent, will find no merit in the objections to the election and will dismiss the Complaint in its entirety.

² General Counsel has filed an amendment to this allegation changing the date of the alleged violation from July 10, 2001 to August/September 2001. The amendment is granted.

A. The Fact Findings

1. Background and the demand for recognition

Land Air is a regional distribution motor carrier with its headquarters in Williston, Vermont. It has seven terminals in its system, including one in Springfield, Massachusetts. It employs about 337 employees system-wide and about fifty employees at Springfield. On August 10, 2001, Peter Krawczyk, Organizer for the Union, filed the Petition in Case 1-RC-21404 seeking to represent a unit of all full-time and regular part-time drivers, dockworkers, Clerks A and B, and dispatchers employed by Respondent at its Springfield terminal. As a result of this Petition, an election was scheduled at Springfield for October 18, 2001. The Respondent won this election.

In his role as an Organizer for Local 404, Krawczyk attempts to organize non-represented employees for the purposes of collective bargaining. In 1999, Krawczyk had been involved in an attempt to organize the same unit at Respondent, but the Union lost the election. The Union filed unfair labor practices charges during the 1999 campaign. These charges were settled by the parties.

On August 9, Krawczyk went to Respondent's Springfield facility with Respondent's employee Michael Krutka and met with Terminal Manager Don Hemenway. Krawczyk attempted to gain recognition by showing Hemenway the signed authorization cards in his possession. Hemenway declined to look at the cards and Krawczyk told him a petition would be filed with the Board. According to Krawczyk he turned to leave and Hemenway shouted at him, "You better watch your back." Krawczyk did not remember anyone other than the three men named being in the immediate area at the time.

However, employee Christine Marie O'Neill was present in the office when the three men met. She remembered Krawczyk asking Hemenway to recognize the Union based on authorization cards, and asking Hemenway to count them. Hemenway said no. Krawczyk and Krutka turned to leave. According to O'Neill, it was Krawczyk who told Hemenway to watch his back and treat his employees fairly. According to her memory, Hemenway replied, "How about telling the truth this time."

Respondent's then Office Manager Christine Catherine Moore testified that she was present for the incident. She testified that it was Krawczyk, not Hemenway, who said "you better watch your back and treat your employees fairly." She remembered Hemenway say "Why don't you try telling the truth this time."

Hemenway himself testified that he was working on the Company's computer when Krutka and Krawczyk came into the office. Krawczyk asked if he wanted to recognize the Union based on authorization cards. Hemenway declined and said he preferred an election. Krawczyk told him, "This time around why don't you treat your people with respect, why don't you treat them fairly. Don't try screwing them over like you did last time." Hemenway replied, "Why don't you this time do a fair campaign, don't lie on your side, and we'll go from there and we'll see how the people want it. Krawczyk then said, "You better watch your back because we'll be watching you."

I credit the version of events related by Moore, O'Neill and Hemenway. I find that both Krutka and Krawczyk were lying, as Krutka did often in his testimony. This alleged threat is one of the alleged 8(a)(1) violations and based on my credibility finding, I recommend its dismissal.

2. Events related to Land Air employee Peter Goodreau

Peter Goodreau was employed as a third shift dockworker for Respondent at the Springfield terminal from December 2000 until his termination on July 17. His duties involved stripping trucks that came in with freight and loading trucks scheduled to make deliveries that day. His immediate supervisor was Mike Roulston. Goodreau became involved with the Union's organizing effort in April. He began talking with other employees about supporting the Union. He testified that no supervisors were present when he spoke to other employees about the Union. Goodreau also solicited signatures for authorization cards at work. He testified that he tried to keep his Union activities a secret from management. Indeed there was no credible evidence overt Union activity that would have come to Respondent's attention until July 13, when a letter naming Goodreau and Krutka as members of the Union's organizing committee was given to Hemenway. I can find no credible evidence to establish that Respondent had notice of the campaign prior to that date.

On May 8, at work on the dock, Goodreau observed another company's truck come in and the driver got out wearing a jacket with a Teamsters logo. According to Goodreau, several of Respondent's employees commented openly, "We should all get a jacket like that." According to Goodreau, Hemenway, who was Respondent's Operations Manager at the time, was present and stated, "Well, if you people think you're going to be wearing a jacket like that, you got another thing coming. The talk about the jacket ceased. Hemenway had no memory of any such event occurring. Though numerous dockworkers testified in this case, no one else remembered this event occurring. I do not credit Goodreau's testimony in this regard and recommend dismissal of the Complaint allegation that Hemenway threatened employees on May 8.

On July 13, Goodreau handed Hemenway a letter from the Union identifying him as a member of the Union's organizing committee. On July 17, Hemenway gave Goodreau a letter terminating his employment due to lack of work. At the time Hemenway commented, "I hate to do this to you, Peter, but work's a little slow right now and I have to let you go. We're laying you off according to seniority – or we're terminating according to seniority in the company." Hemenway also informed Goodreau that he had just terminated the then terminal manager, James Walpole. Hemenway indicated he hoped to recall Goodreau if work picked up.

Respondent's personnel records reflect certain warnings issued to Goodreau. The first is dated February 2, and was issued for carelessness, accusing Goodreau of loading a truck and failing to load six pieces of a larger shipment. The warning was given him by Walpole. Goodreau's response to the warning was that he was in training at the time and the warning should have been given to his supervisor who was in charge of his training. Goodreau was given a second warning on June 20. This warning was issued by Goodreau's supervisor, Michael Roulston, and was also for carelessness for another misload. Goodreau received a third warning on June 29. This one was for substandard work for improper loading of a truck. The warning stated that a subsequent warning would involve a three-day suspension. He received a fourth warning on July 3 for defective and improper work involving another misload. He received a three-day suspension from July 10 –12. The suspension actually started July 15.

Michael Roulston is the Outbound Supervisor for Respondent's Springfield terminal. He testified that proper loading of the trucks is important as it affects the company's ability to provide next day delivery, which is what Land Air's customers expect. Roulston gave Goodreau all of the warnings that were issued in June and July, 2001. He discussed each incident which

gave rise to the warnings with Goodreau. According to Roulston, Goodreau did not sign the warnings as he is in denial about having committed the offenses. Roulston investigated each instance and is certain that Goodreau was responsible for the incidents. He denies that Goodreau ever asked him for any backup documentation about the incidents. If Goodreau had asked he would have shown him the documentation. He contends Goodreau consistently mishandled freight. Hemenway denied having any involvement in the issuance of discipline to Goodreau. There was no showing in this record that the mishandling of freight for which Goodreau received warnings did not occur or that Goodreau was not the party responsible for the mishandling. Roulston denies any knowledge of Goodreau's Union activity at the time of the warnings and suspension. I credit this denial. There is no showing that Goodreau's Union activities or sympathies were known to Roulston or anyone else in Respondent's management. Absent such a showing there can be no violation of the Act. I recommend the Complaint allegation relating to these warnings and the suspension be dismissed.

Following his suspension, Goodreau returned to work and worked the night of July 17. At the conclusion of his shift he was terminated. The matter of Goodreau's termination will be addressed later. Goodreau voted in the October election, and his vote was challenged

On January 23, 2002, Goodreau received a letter from Respondent in which he was offered a dockworker position on the second shift, full time, Monday through Friday at the same rate of pay he enjoyed on the date of his termination.

Hemenway testified that after the letter was sent he learned Goodreau had moved and got Goodreau's telephone number from another employee. Hemenway had been holding the job open for Goodreau and called to see if he wanted it. According to Hemenway, Goodreau admitted getting the letter, but had not responded to it. Hemenway asked if he were interested in the job, and Goodreau asked if he had been fired or laid off. Hemenway testified that Goodreau was becoming confrontational and so he said, "What is done is done. Do you want this job?" Then Goodreau said he was going to call his lawyer accusing Hemenway of harassing him. Hemenway said he was not harassing him and did he want the job. Goodreau hung up.

This phone conversation was followed by a letter from Hemenway dated January 28, 2002, which reads:

"As per our conversation on January 28, 2002, you were terminated due to lack of work with no expectation for rehire. I offered you a job back with (Respondent). You did mention that you already had a job. You did not accept my offer for a job. Accordingly we must offer the job to someone else. The offer to you has been withdrawn."

3. Events related to Land Air employee Michael Krutka

a. Events occurring in 2001

Michael R. Krutka is currently employed by Respondent as a line haul driver having been rehired in March 2002 from a July layoff. He had previously worked for Respondent from June 2000 until December 2000. He voluntarily left in that month to take a job with another company. He was laid off by that company after a month and was unemployed until he was rehired by Respondent in May 2001. Shortly after being rehired, he suffered an injury to his arm and he was put on light duty on May 17. The light duty consisted of him doing clerical work in the office and scanning documents into the Respondent's computer. He also assisted in training drivers and accompanying them on road tests.

Krutka was involved in the Union organizing campaign. He talked to other employees, handed out flyers and got authorization cards signed. He began this activity in early July.

5 On July 10, at a Walgreen's drug store in the area, he spoke with Hemenway. According to Krutka, Hemenway said Respondent's President William Spencer had heard about Union activities at the Springfield terminal and was coming down to check on them. Krutka had no response.

10 Hemenway admits running into Krutka at a Walgreen's drug store on July 10. According to Hemenway, the two men made general small talk related to their respective physical ailments and business conditions at the terminal. They talked about the loss of customer Brandon Transportation with Krutka noting that he had worked for them and they went out of business owing him a paycheck. According to Hemenway, there was no mention of Union activity or a visit by Spencer to the terminal. Hemenway testified that he was unaware that Spencer was
15 going to make a call on the terminal.

20 I credit Hemenway's version of this encounter. Other than Krutka's self serving testimony, there is no credible showing of any knowledge of Union activity on the part of Respondent until July 13. In addition, I am certain Krutka lied about the events of the day on which recognition was demanded and will demonstrate he got caught in another obvious lie about an incident in April 2002.

25 Spencer did come to the terminal that day. As I will discuss in detail below, he and Hemenway had been engaged in discussions about layoffs at the Springfield terminal. Spencer testified that he went to the terminal on July 10 to finalize the layoff plans with Hemenway. According to him, there was no discussion of Union activity on this date as they were unaware of such activity on that date. After meeting with Hemenway, Spencer met with a small group of drivers in the Company's break room and then a small group of dockworkers on the dock. With the drivers he discussed problems with Land Air's health insurance. The Company's negative
30 cash flow at the time impacted its ability to fund claims in a timely manner, a situation exacerbated by the ineptness of the insurance carrier's administrator. He spoke with the dockworkers about the need to improve service to keep customers.

35 Krutka testified that he saw Spencer at the terminal speaking to the dockworkers on the dock. According to Krutka, he told them that he had heard that a Union was attempting to come into the Company, that they were not to be fooled, that the Union was painting a big colorful picture, that the Union was giving them a sales pitch and was trying to generate money. He spoke about freight bills and working conditions on the dock. He told the employees he wished that the Springfield terminal was like the others and employees did not talk about union
40 activities, pointing out that the Springfield employees were among the higher paid employees in the company.

45 Spencer denies there was any discussion of Union activities on July 10. He denies surveilling employees, or telling employees not to talk about the Union, or interrogating employees about their Union activity or soliciting grievances and promising to remedy them. I credit his denial. Not only do I not find Krutka credible, a large number of drivers and dockworker testified in this proceeding, some of whom must have been in one or the other of the meetings held by Spencer on July 10. Yet, Krutka is the only witness to have heard what he alleges he heard. I do not believe his testimony about what Spencer said on that date.
50 Accordingly, I recommend dismissal of all complaint violations based on this testimony.

On July 11, Krutka received a call from Walpole, and was told he was being terminated, as it was cost efficient to put him on Workers' Compensation. He objected to this, but Walpole was firm.

5 Hemenway testified that prior to July 10, it had been decided to lay off a number of employees and that Krutka was on the list of employees to be laid off. This matter will be discussed later. However, Spencer had seen Krutka on July 10 on the dock. Spencer testified that Krutka was walking back and forth and not really working. He inquired of Roulston what
10 Krutka was doing. Roulston told him Krutka was on light duty and was supposed to be scanning documents. This irritated Spencer and he told Walpole and/or Hemenway to put Krutka on full workers' compensation. Walpole and or/Hemenway did so the next day. Hemenway was not happy with Krutka's light duty performance either. He testified that Krutka did the work, but took a lot of breaks, complaining that his injured arm would begin to hurt. According to Hemenway,
15 Krutka also took a lot of breaks to smoke. Hemenway testified that another office employee, Mary Ann Danus, quit because she became upset with Krutka's non-performance. She and Krutka got into an argument and she resigned.

20 This performance issue was discussed by Spencer and Hemenway on July 10 and Spencer directed Hemenway to put Krutka on full worker's compensation. This decision was made in the context of deciding which office workers could be laid off.

25 Following Krutka being placed on full worker's compensation, he continued to aid the Union organizing effort. He passed out flyers during July. A letter naming him as a Union organizer was given to Hemenway on July 13. He received a letter stating he was terminated due to lack of work on July 17. The matter of the termination will be discussed below.

30 Krutka contends that at the time he was terminated, Respondent hired a new clerical to do the light duty work he was doing. At about the same time he was told by Supervisor Todd Bailey that there were other layoffs, but that Bailey did not understand Krutka's layoff as Respondent needed line haul drivers. Bailey had left Land Air by the time of hearing and did not testify. I doubt seriously that he made this comment though, as at the time it was allegedly made, Krutka could not drive and did not get a doctor's okay to return until October, over four months later.

35 On August 2nd Krutka returned to the terminal and passed out flyers. He also spoke with Bailey. Krutka was in the terminal parking lot passing out flyers. Bailey came out to him and told him to be careful as Hemenway had instructed him to call the police if either he or Goodreau came on the Respondent's property. On August 20, he telephoned Bailey, but got in touch with Hemenway instead. According to Krutka, Hemenway told him that Bailey was driving because
40 Land Air was short of drivers. The next day, he went to Respondent's terminal with Krawczyk to demand recognition. Krutka in his testimony stated that Hemenway told Krawczyk "You better watch your back." I have already found that this last bit of testimony by Krutka was a lie. Because of my belief that Krutka is not a person to believe, I do not credit his alleged
45 conversation with Bailey. Hemenway denied that he ever gave instructions as alleged by Krutka. No one called the police, no one was arrested and no one else in the myriad of witnesses appearing herein testified they heard Bailey or anyone else, say that there were standing instructions to have Goodreau or Krutka arrested if they came on the property. I recommend dismissal of the allegation in the Complaint in this regard.

Krutka attended the October 18 election as the Union observer and his vote was challenged. Krutka was released from light duty on October 22. He went to Land Air and asked Hemenway for his job back. Hemenway said no, and Krutka commented that he suspected that he was not getting it because of his union activities. He testified that Hemenway said, "That's right." Then Hemenway added, "But I may be able to use you down the road somewhere. I don't know." I do not credit this testimony.

b. Events occurring after Krutka is re-hired by Respondent

Krutka remained unemployed until Respondent hired him back in March 2002. When he came back, he was told that he would have the job of driving a straight truck doing pick up and delivery around Connecticut instead of line haul driving. Krutka performed this function for two weeks, then was given a line haul driving job. At the time of the switch from pick up and deliver to line haul, Hemenway commented to him in response to Krutka's query as to why he was changing the job, "Well, you ought to know, you called the National Labor Relations Board."

Krutka testified that in the performance of his job as a line haul driver, he must spend about thirty minutes prior to driving checking out his truck for safety reasons. This pre-trip inspection is mandated by the Federal Motor Carrier Safety Regulations. He testified that Respondent's drivers are routinely given about 30 minutes to perform their pre-trip inspection. He testified that he has observed several drivers still at the terminal thirty minutes after they have been given an assignment.

On April 3, 2002, the truck Krutka regularly drove was not there, so he asked his supervisor which truck he was driving and was told which one. He found the tractor and performed his pre-trip inspection, then went looking for the trailer he was to haul, but could not find it. He returned to his supervisor and began telling him that he could not find the trailer. His supervisor, Roulston, looked at his watch and said, "You're not gone yet?" The two men engaged in an argument, then Krutka said he wanted to talk with Hemenway to tell him that Roulston was acting very unbecoming as a supervisor. According to Krutka, Roulston replied, "Fuck you, I don't care who you talk to." Krutka testified he then went out and left with the heretofore unfindable truck and trailer. The next day Krutka complained to Hemenway about the incident with Roulston and said that if he said that to a supervisor he would be fired. According to Krutka, Hemenway agreed with him. Krutka demanded a meeting with Hemenway and Hemenway agreed. However, the meeting did not happen until almost a month later. Roulston denies that this event occurred and I credit his denial based on Krutka's propensity to fabricate untruthful testimony. Even if I accepted the testimony as given, I would not find any violation of the Act. Under Krutka's version, Roulston asking why he had not yet left the terminal based on Roulston's understanding that Krutka could not find his assigned trailer sounds reasonable to me. Roulston was not preventing him from doing his pre-trip inspection as alleged in the Complaint. That had already been done. Roulston was simply, in my opinion, expressing dismay over Krutka's inability to find a trailer.

On April 18 or 19, Krutka reported to work and walked out on the dock. He encountered a forklift driver named Joe and the two began talking. Suddenly, Krutka heard a scream, "Leave the fucking help alone." It was Roulston yelling at Krutka. Krutka left. Roulston admits telling Krutka to stop talking to another employee on the dock as there was work to do and it was not break time. He contends that Krutka frequently stops work to talk to other employees. Roulston does deny cursing at Krutka and denies telling him to leave the help alone. I credit this denial. There is nothing unlawful about a supervisor telling an employee under his supervision to stop talking to another employee if he is on work time. This is especially true if the employee he was

talking to was working as was the case here. I find no violation of the Act as alleged in the Complaint.

5 Shortly after being told to stop talking to the other employee, Krutka asked Roulston about his job assignment. Roulston said he had two deliveries. The first was a regular run for Krutka. The second delivery, to be made after returning from the first, was to Cheshire, Connecticut. Krutka did not know how to get to Cheshire. He noted this to Roulston who said not to worry about it. According to Krutka he asked Roulston for directions. Roulston looked at him angrily and said, "Look, don't concern yourself with it, just get out of here. Go." Krutka left
10 and began having allergy attacks and he told Roulston he was going home. Roulston said, "Why don't you just cut the bullshit." He then told two employees, Nick Alman and Laurie Phillips, that he was going home sick.

15 Roulston testified that in response to Krutka's request for directions, he told Krutka that he would have them by the time Krutka returned from his regular run. According to Roulston, Krutka blew up and said, "I don't like your attitude." Krutka yelled some more and left. Krutka found Roulston on the dock about ten minutes later and said he was sick and going home. Roulston denies that Krutka's involvement with the Union has had any effect on his treatment of Krutka.

20 Laurie Phillips was present for the conversation between Krutka and Roulston. She heard Krutka ask for directions, but her testimony is that Roulston said, "no problem, we'll get you directions." She testified that Krutka's response was "I don't need your attitude. I don't need this anymore. This is ridiculous." Then Krutka abruptly left and did not come back for a while.
25 Then he did return and told Phillips he was sick and going home.

30 Patricia Ann Walls was present at the time of this incident. She remember Krutka saying he would need directions to get to Cheshire, and Roulston responding, "Sure, no problem, we'll get you the directions. When you get back from Turf Products in Enfield, we'll have the directions for you." Walls testified that Krutka became irate and started yelling. He yelled "What the hell is your problem, I don't need this shit from you." She testified that Roulston was in no way rude.

35 Land Air driver Jesse Anthony Williams was present at this incident. He testified that Roulston was getting something off the computer when Krutka came in and asked if he was making his regular run. Roulston said, no, that he was going to Cheshire. Krutka asked if Roulston knew how to get there. Roulston said no, but that he would find out. Krutka said he would need directions. Roulston replied that he would get them as soon as he finished what he was doing on the computer. Krutka then told him he did not have to talk to him in that tone of
40 voice. Krutka added that he did not have to take this.

45 This incident is alleged to be a violation of the Act. I credit Roulston, Walls, Phillips and Williams and find that for whatever personal or health reason he may have had, Krutka had an unprovoked temper tantrum. As it was his fault the yelling occurred and it was Krutka doing the yelling, and as Roulston did not refuse to find him directions, I find no violation of the Act occurred.

50 Krutka called in on his next scheduled workday, April 22 and spoke with Hemenway. He told Hemenway he still had allergies and would not be in. According to Krutka, Hemenway said, "It doesn't matter, you're fired. You fucked us." Krutka asked why he was fired and Hemenway said, "Well, Mr. Croop-ka," and Krutka interrupted and said, "Please don't make fun of my name like that". Hemenway then said, "You're fired and that's all there is to it." Krutka then went to the

Union hall. He spoke with Krawczyk and the two then called the General Counsel in this case, who said he would speak with Respondent. Shortly thereafter, Hemenway called him. Hemenway said there had been a mistake and that if Krutka need the next day off because of allergies, to take it. Krutka went to work the next day and also wrote Hemenway a letter
5 complaining of harassment by his supervisor and threatening to file an unfair labor practice charge if something was not done to stop it.

With respect to this incident, Hemenway testified that Roulston informed him on April 19 that Krutka walked out of the job. Roulston told him to go make his regular run and then take a
10 run to Cheshire. Roulston related how Krutka blew up during their discussion and left. The following day Hemenway read statements from employees who observed the incident. Hemenway determined to see Krutka about the incident. But before he could, Krutka called in saying he was sick and was not coming to work. Hemenway asked what had happened the night before and Krutka gave his version. Hemenway said he could not have this and terminated
15 Krutka's employment. Hemenway hung up and called his superior Mac Savage. During their talk about the situation, Hemenway mentioned that Krutka had said he was sick. Savage advised that if he were sick, then they should not have terminated him. He told Hemenway to hire him back. Hemenway called Krutka, but did not reach him. He left a message on his answering machine. Krutka returned to work the next day.

Regardless of whether Krutka was hired back because of pressure from the NLRB or because Savage felt termination was unwarranted in the circumstances, I do not find that the termination was motivated by any Union activity engaged in by Krutka or by any anti-union animus. Termination or discipline of some sort seems warranted given Krutka's unprovoked
25 confrontation with Roulston. In any event, Krutka lost no pay, no time and was terminated for less than an hour. I agree with Respondent that even if this could be construed as some technical violation of the Act, it is *de minimus*. I do not find the short-term termination to be a violation.

Krutka returned to work and for the next two nights, April 24 and 26, 2002, was, in his opinion, given short runs, working only between five and six hours before being sent home. His normal shift was between eight and nine hours. The third night he returned he worked the normal hours. With respect to the matter of the allegations that Krutka's hours were reduced on April 24 and 26, Hemenway denies this is true. Any reduction in hours on a given day is driven
35 by the amount of business that has to be done. He testified in detail that the amount of freight available varies daily. Krutka's timecard for the week in question shows he worked 35.5 hours and took off one day for illness. This timecard supports Hemenways testimony. Though Krutka did not work eight hours on the two days in question, he worked more that that on other days. He is a 40 hour a week employee, with hours in excess of 40 being overtime. Had he not been
40 ill one day he would have gotten overtime as his regular daily run exceed six hours. I find that the two short days were the result of business available to handle and nothing more. If Respondent wanted to harass him in this way, why just two days? I certainly do not find any violation of the Act.

On April 29, 2002, Hemenway told him they were going to have a meeting, evidently acting on the request made by Krutka on April 2, 2002, and he met with Hemenway and Roulston. Hemenway told him he wanted him to stop going to the Union over Company problems. Krutka replied this meeting was not about the Union and Union activities. Hemenway replied, "You know, it's not over yet." Hemenway then urged Krutka to go forward and work out
50 his problems. Krutka replied, "I think when we come here we should be business. I don't need to be ridiculed when I come in to work on, you know, what I need to do and how I need to do it. I'm well aware of Land Air's procedures on what to do." According to Krutka, Hemenway said, "Yes,

we need to get along here”, and he told Krutka he was doing a really good job and to keep the good work up.

With respect to the April 29 incident with Krutka, Hemenway testified that he called a meeting with Roulston and Krutka to clear the air as it was obvious to Hemenway that Roulston and Krutka were not getting along. At the meeting Hemenway said enough is enough, we need to work together. He told Roulston to respect Krutka as he does a job for Land Air. He told Krutka essentially the same thing. He pointed out to Krutka that he cannot expect just to make his regular runs, that on some nights he may be asked to take a different run. He denied telling Krutka not to go to the Union over Company problems. I credit Hemenway’s version of the meeting. Accordingly, I find no violation of the Act.

On Friday May 3, Krutka asked Hemenway for time off to attend the earlier scheduled hearing in this case. This was two weeks before the scheduled hearing and Krutka asked for the entire week off. According to Krutka, Hemenway said no. Krutka responded that he was taking the time off. Hemenway said he would get back with him. A few days later a similar conversation occurred. At the hearing, Krutka testified that he was not being paid by Respondent for the time he was taking off, but that the Union was paying him what he was not getting from Respondent.

With respect to the refusal to let Krutka have time off to testify, Hemenway remembers Krutka on a Friday approaching him on the dock. Krutka said he needed an entire week off for the scheduled NLRB hearing in this matter. Hemenway asked why he needed an entire week. Krutka replied, “I’m the star witness, I’m the key witness, they’re going to need me every single day. Hemenway expressed doubt that he would be needed every day pointing he was also important to the presentation and was not taking the week off. Hemenway denies that he flatly refused the request, instead he testified that he would check with the lawyers and get back to Krutka. He denies that he told Krutka he could not testify.

I credit Hemenway's version of the conversation. However, under either version, there is no violation. Hemenway did not flatly refused to let Krutka take off, as even Krutka testified he would get back with him. Hemenway did check and Krutka was at the hearing every day. I do not find a violation of the Act.

4. The Electioneering Objection

Union Objection No. 1 states that Respondent and its agents engaged in electioneering at the polls. Krutka testified that at the election, in the room where he was acting as observer for the Union and the vote was taken, posted on a bulletin board was the following notice:

“The union organizers distributed information claiming the union will be able to deliver on all its promises. You should know the law allows the union to make promises to you, even though the law does *not* require the union to deliver. *Remember*, it is Land Air Express which pays your wages and provides you with your benefits. No one- including a union – can force us to do anything which does not make good business sense.

We want you to understand the difference between fact and fiction.

First, let us look at what the union *cannot* force Land Air to do:

1. THE UNION CANNOT force Land Air to agree to any request the company is unwilling or unable to accept.

2. THE UNION *CANNOT* force the company to increase any wages or benefits unless the company believes it is in its best interest to do so.
3. THE UNION *CANNOT* guarantee job security or furnish you regular work.

5 Now, let us take a look at what the union *can* force employees to do:

1. THE UNION *CAN* force employees to pay dues each and every month.
2. THE UNION *CAN* force members to stand trial and pay fines for violations of any provisions of its constitution.
- 10 3. THE UNION *CAN* force members to pay extra assessments whenever the union treasury requires more money.

Consider the many advantages and benefits you now enjoy without a union. When you do so, I am sure you will vote "NO".

15 Krutka testified that he observed voters reading the notice. Krutka testified that during voting, Krawczyk saw the notice and had the Board agent remove it. This testimony is certainly ly not borne out by any other testimony. Employee Laurie Phillips testified that she voted in the election, but did not see this notice posted on the bulletin board. Employee William Moore
20 testified similarly. Respondent's observer at the election, George Patullo, sat in front of the bulletin board on which this notice was posted. He testified that did not see the notice on the bulletin board nor did the Board agent. He further testified that Krutka said nothing about any notice on the bulletin board. He saw no voters look at the bulletin board before they voted. Employee Darlene Drinkwine testified that she voted and looked at the bulletin board, but did
25 not see this notice. Employee Christine Marie O'Neill testified that she voted, but did not see the notice. Employee Louis P. Suzar voted but did not look at the bulletin board. Employee Jamie Gustafson voted, looked at the bulletin board and did not see the notice. She testified that the notice was not posted on the day of the election. Employee Martin Patry, voted looked at the bulletin board, but did not see the notice. Employee Steven Timbro voted but did not see the
30 notice.

Respondent's Office Manager at the time of the election testified that she personally checked the bulletin board the night before the election and the notice in question was not posted. Hemenway testified that on the morning of the vote, he checked the bulletin board and
35 found nothing on it related to the campaign. Hemenway heard nothing on the day of the election about anything improper being posted on the bulletin board.

I believe this is yet another Krutka – Krawczyk fabrication. I credit the testimony of every other witness offering evidence about the notice and find that it was not posted on the bulletin
40 board on the day of the election. I will find this objection to the election has no merit.

5. Violations of the Act alleged by Nicholas Alman

Nicholas Alman is a dockworker for Land Air and had previously done pickup and
45 delivery for the Company. At the time of hearing he was on light duty because of an injury. He began work for Respondent on January 11, 2000. At some point in June, about a week before or after June 19, Alman met with then Terminal Manager Walpole and Operations Manager Hemenway. He had been looking at time cards and talking with a fellow employee. Walpole was nearby. Alman just blurted out the word, "Union." He testified that Walpole looked at him and
50 then turned away. Thereafter he was called into the meeting. Walpole talked a bit about unions and then Hemenway continued on the subject. Hemenway told him the Union had tried to get in in the past and failed and would never get in. Hemenway told him that if he was not happy with

his job or did not like his job, there was the door. Hemenway told him that “we” did not need a union. Hemenway indicated he did not want Alman spreading the word “Union” around. Alman considered himself to be a leader among employees. It appeared to Alman that he was being picked on.

5 With respect to the meeting between himself, Alman and Walpole in June, Hemenway testified that he was at the meeting as a witness. According to Hemenway, Alman had gotten into a verbal confrontation with a customer and the customer was very unhappy. The customer had instructed Land Air that Alman was not to come to their facility again and threatened not to use Land Air again. At the meeting, Walpole asked for Alman’s version of the confrontation. 10 According to Hemenway, Alman admitted to having an argument, saying the customer had become arrogant with him and Alman did not want to deal with it. Walpole then counseled that customers are the Company’s lifeline and that it could not have the kind of attitude Alman exhibited. Walpole then gave Alman the name of a book on anger management and asked him 15 to read it. Alman said he was not going to buy or read the book. According to Hemenway, there was no mention of the Union in this meeting. Hemenway testified that he told Alman, that he had been working for Land Air for a long time, that he knew what was expected of him and that if he did not like working there, he had to make a choice. Either he abides by the rules or he finds another job. Hemenway testified that he had no knowledge of Union activity in June 2001, 20 and further, since he was present during the 1999 Union organizing campaign, he knew that threats related to Union activity were prohibited. Walpole testified and his testimony corroborates that of Hemenway. As Walpole was terminated by Respondent, he had no reason to lie.

25 I credit the testimony of Hemenway and Walpole over that of Alman. Wholly aside from the fact that I have found that Respondent did not have knowledge of Union activity at the time this meeting took place, the tenor of the comments alleged by Alman to have been made by Hemenway are starkly different from the picture painted of Hemenway by a score of other employees on the Union issue. As will be shown, several witnesses heard Hemenway tell them 30 that they should go to Union meetings and hear what the Union has to say. They heard Hemenway say that they should get informed by both sides and make their own choice, and that there would be no reprisals regardless of the way they voted. I believe Alman is in league with Goodreau, Krutka and Krawczyk and is fabricating stories.

35 Alman attended a meeting in August where Spencer spoke to employees about wages. Though Alman’s testimony is garbled, the gist of what he said is that Spencer said he did not want a union and could prove the Company was not making a profit. He stated if the union were voted in, he would not have to give raises because the company was not making a profit. He added that Spencer said he was strongly against the Union and would close the Springfield 40 terminal if the Union were voted in. Alman heard him say this two or three times. Alman believed the time frame for these statements to be in the fall before the election. He testified that these statements were made in conversations with three or four employees following a large meeting of employees where Spencer spoke. In Alman’s pre-trial affidavit, he stated: “at one of these staff meetings, the president of the company, Bill Spencer, told us that if the Union got in, he still 45 wouldn’t have to give us wage increases if he could prove he wasn’t making a profit.” There is nothing in the affidavit about Spencer’s threat to close the facility. Alman believes every employee at the Springfield terminal has heard Spencer make this threat. He contends that Hemenway has made the same threat. Spencer and Hemenway deny ever making the statements alleged to have been made. A number of witnesses attended the meeting where 50 Spencer spoke and they did not remember either man saying they would close the terminal if the Union were voted in. I credit their denial and find the alleged comments by Hemenway and Spencer did not happen.

Alman testified that he was surprised that the Company laid off employees by seniority as it is an "at will" employer. He added he had volunteered for layoff, but the company laid off by seniority and did not lay him off. He testified that he made this offer to Hemenway and
 5 Respondent's Vice President of Operations Mac Savage. Savage told him he was too high up to be laid off. He testified that Savage held an employee meeting in June to discuss the possibility of layoffs. Alman said that work was slowing down at the Springfield terminal and it was obvious that layoffs would have to occur. These meetings occurred about three weeks prior to the layoffs.

10 Alman agreed with Counsel for Respondent that 2001 was a bad financial year for Respondent and wages were not increased for employees making the top wages, as is Alman. Spencer told employees that the Company's costs, including insurance premiums were increasing and that cuts had to be made. Alman agreed the terminals business was slow from
 15 2001 up to about March of 2002.

6. Violations of the Act alleged by Nelson Lopez

20 Nelson Lopez works for Land Air as a pickup and delivery driver at the Springfield terminal. He has been employed for between two and a half and three years. Between July and October, he attended weekly meetings for the drivers. He recalled such a meeting around the middle of July with Walpole and Hemenway speaking for management. He came in late for this meeting and only heard Walpole say that Spencer would rather close the doors than to have the Union in. Lopez pre-trial affidavit states "I never heard Spencer, or anyone else say that the
 25 Company would move if the Union came in." He testified that Spencer made no threats about what would happen if the Union were voted in. Walpole denies ever saying what Lopez alleges and I credit his denial. First other employees testified who would have heard the comment if made and did not corroborate Lopez's testimony, and second, Walpole was terminated before the Company began holding meetings about the Union.

30 Lopez attended a meeting about a week before the election where Spencer spoke. Spencer told them there were not going to be cost of living wage increases because the business was not good. He also remembered an October meeting conducted by Hemenway and Savage. He was told that if the Union were voted in, any employee not already at the top of
 35 the wage scale would have their wages frozen until negotiations are completed with the Union. Spencer also responded to some employees' complaints that their medical bills were not being timely paid and he responded that it was the responsibility of the Company's insurance broker.

40 Spencer testified that in speaking to employees about wages he made two statements. In one, after describing the Company's poor financial condition, he told employees that unlike previous years, employees that had received wage bumps (apparently like cost of living increases) – wage bumps to the entire scale, that was not going to happen at the end of 2001. Second, in response to a question at an employee meeting, he stated that scheduled wage
 45 increases for employees not at the top of their scale would continue. I credit Spencer on what he told employees in regard to wage increases. A number of other witnesses testified who were at the meeting that Lopez described and did not corroborate his testimony about wage increases.

50 A number of Respondent's documents were introduced into evidence by General Counsel but not discussed on the Record. One of these is Respondent's Employee Handbook, which contains a section entitled "Union Free Philosophy-Working Together-Speaking for

Yourself.” *Inter alia*, it states: Land Air Express of Vermont is a nonunion employer, and it certainly is our desire to remain that way.”

Respondent’s evidence related to the alleged
Section 8(a)(1) adduced through employee witnesses.

Employee Laurie Phillips denied hearing Hemenway threaten employees because of their union support, nor did she hear him prohibit employees from talking about the Union. She never heard Hemenway threaten an employee with discharge for talking about the Union. She testified that from her viewpoint, Spencer did nothing that would create the impression that employees Union activities were under surveillance. She never heard him say that it would be futile to vote in the Union. She never heard Spencer state a rule against talking about the Union at the Springfield terminal. She never heard Spencer interrogate employees about their Union activities or sympathies. She never heard Spencer solicit employee grievances and promise to remedy those grievances. She never heard Spencer threaten employees with an end to wage increases. She never heard Walpole represent that Spencer would rather close the Springfield terminal than let a Union come in. She never heard Bailey threaten an employee with arrest if certain employees or Union representatives came on Company property. She never heard Hemenway threaten Krawczyk by telling him he had “better watch his back.” She never heard Hemenway threaten employees with loss of wages or benefits if the Union came in. Employees William Moore, George Patullo, Darlene Drinkwine, Christine Marie O’Neill, Louis P. Suzar, Jamie Gustafson, Martin Patry, Stephen Forrest, Michael Allard, Steven Timbro, Christine Catherine Moore testified similarly.

William Moore is a driver who has been employed by Respondent for four and a half years. He testified that he did hear Hemenway say that it was going to be a fair election and employees should feel free to vote any way they wished. He testified that Respondent never took a position with respect to the Union. He testified that at the employee meetings that Spencer attended, Spencer said nothing about the Union.

George Patullo is a driver with Land Air and has been so employed for over four years. He attended a number of the pre-election employer-employee meetings. He testified that Hemenway gave the pros and cons of the Company being union and non-union and suggested there be a fair election. He never heard Hemenway or Spencer make any threats during the Union campaign.

Darlene Drinkwine has been employed by Land Air in customer service for two years. She attended three employer-employee meetings during the Union campaign. She remembered Hemenway telling employees they should vote any way they wanted, there would be no reprisals and no pressure was put on employees to vote one way or the other.

Christine Marie O’Neill has been a customer service representative for Land Air for five years. She attended two or three employer-employee meetings prior to the election. She remembered Nick Alman being at one such meeting she attended.

Louis P. Suzar has been a driver for Respondent for five years. He attended two or three of the employer-employees meeting held by Land Air. Hemenway was the main speaker at these meetings. Suzar remembered Hemenway telling the attendees to go to Union meetings and see what was going on, then use your own judgment and do what want you want to. Hemenway never threatened anything according to this witness.

Jesse Anthony Williams has been a dockworker for Land Air for a little over a year. He was working on the dock the night of May 8, but does not remember any incident involving a driver with a Teamster's jacket. He was not sure he was working that day. Williams was laid off in July 2001. He was rehired in May 2002.

Jamie Gustafson has worked for Land Air for a year in OS&D. She began working for Land Air in July 2001. At first her job was part-time, about two hours a day or fifteen hours a week. After a couple of months, she became full time. She made \$10 per hour to start and currently makes \$10.50 per hour. She attended three meetings during the Union campaign. Hemenway did most of the talking at these meetings, although Spencer and Savage were in attendance. She testified that Hemenway did not want to know how employees were going to vote. She testified that he said he did not want to hear any talk about voting Union, not voting Union at work at all. It was your own opinion.

Martin Patry has been employed by Land Air as a dockworker for three years. He attended four employer-employee meetings during the campaign. He testified that at these meetings Hemenway encouraged employees to attend Union meetings, ask questions and feel the Union out. He said at one meeting Spencer spoke, mainly about insurance as the Company was changing providers. Patry testified the only thing Spencer said about the Union was the same as Hemenway, the employees ought to go to meetings and listen to what was said.

Stephen Forrest has been a driver for Land Air for three years. He attended four or five of the employer-employee meetings. Walpole attended at least one of the meetings he attended. At the meeting where Spencer spoke Forrest testified that he said "the Union was looking to have a vote, to be recognized as the bargaining party for us," and advised employees to attend the Union meetings. He advised them to listen to what the Union had to say and then vote the way we felt we needed to vote. Neither Hemenway nor Spencer talked about the Union and wages.

Steven Timbro is driver for Land Air and has been so employed for five years. He attended three employer-employee meetings. Hemenway spoke at one of these meetings, Walpole at another and Spencer at another. He remembered Hemenway advising employees to get the facts, find out what the Union can do for you. He also encouraged them to go to the Union hall and attend meetings. Hemenway assured them there would be no ramifications regardless of how employees voted. He testified that Spencer told the employees that if they voted for the Union it would not be held against them.

Hemenway testified that he conducted a series of four employee meetings relating to the Union campaign. They began on or about August 17, with the same speech being read in a series of meeting of the employees from different shifts. He read from prepared text. At the conclusion of the speech he would entertain questions and answer the ones he knew. For the others, he told the employees he would get back with the answer.

Another group of meetings with employees conducted by Hemenway were held at the end of August. In these meetings, he again read from a prepared text and then took questions. The next set of meeting occurred in the first or second week of September and the same format was followed. At the next series of meeting, in addition to the prepared speech and a question and answer period, Hemenway gave employees a "coupon book" that in coupon format posed questions related to the Union and gave answers. The prepared speeches from which Hemenway read are in evidence as Respondent's Exs. 9 – 12. The "coupon book" is an attachment to Respondent's Ex. 12. There is no contention that anything in these documents violates the Act.

Hemenway denied prohibiting talk about the Union, noting he told employees to get information from the Company, from the Union and make a choice. There is no credible

evidence that any employee was directed not to talk about the Union and no discipline was issued to any employee for talking about the Union.

Hemenway testified that he was present for the October meeting at which Spencer spoke and denies hearing at that meeting or at any time, Spencer threaten employees with an end to wage increases. Hemenway denies threatening employees with loss of wages or benefits if the Union were voted in in any meeting with employees generally, or with an individual employee.

Hemenway testified that he has never heard Spencer interrogate employees about their Union activities or announce a rule against talking about the Union. He never heard Spencer solicit grievances or promise to remedy them.

Hemenway testified that he never instructed Todd Bailey to arrest employees or Union representatives if they came on the terminal grounds.

Spencer denies telling employees that he would close the facility or the Company rather than let the Union represent its employees.

8. Respondent's evidence relating to the layoffs

William Spencer is the CEO of Land Air. Spencer testified about business conditions in 2001. He testified that in late 2000, the Company faced escalating insurance premiums, with the premiums doubling, going from \$900,000 to \$1.8 million. The economy was softening and consumer goods traffic was down. Traffic levels at Land Air started to fall at the first of 2001 and continued until March 2002. A combination of the factors noted and others caused the Company to begin losing money at the end of 2000, with the losses continuing in 2001. The negative cash flow in 2001 caused the Company to approach its bank for new lines of credit. The banks made the lines of credit available, but with many strings attached. Land Air was being cut off by many of its vendors, including essential fuel suppliers. For a few months, the company got by, but then went back to the bank for additional credit, which was refused. He determined the only way the Company could operate was to cut costs, primarily through payroll deductions. Payroll and associated costs were 60% of total revenue. Thus early in the year 2001, all terminals except Springfield experienced forced payroll deductions. Springfield was also experiencing suppressed freight revenues.

Ultimately during 2001 all terminals experienced layoffs. These layoffs resulted in reductions in payroll of \$40,000 to \$45,000 per week. During June 2001, Spencer had discussions with Walpole and Hemenway about reducing staff and cutting payroll. However, Walpole continued to add staff. Failing to get Walpole's attention, Spencer asked Hemenway about the situation and Hemenway had different answers. Hemenway told Spencer they were overstaffed.

Hemenway, in late June and early July, 2001, had discussions with Spencer about the financial and business conditions relating to the Springfield terminal. Hemenway testified that the Company's business usually becomes busy in May, and June is usually the busiest month of the year. In the winter of 2000 – 2001, the Company lost some big accounts. The Respondent stopped doing business with Triangle Transportation because that company was

not paying bills. For the same reason it stopped handling one to three truckloads of freight daily for Brandon Transportation.

Spencer testified that at the first part of 2001, Land Air ceased doing business with Brandon Transportation, a company that directed a good deal of freight through the Springfield terminal. Brandon became unable to pay its bills and went out business owing Land Air some \$179,000. Another customer, Triangle Transportation, got into a dispute over whether it owed money to Land Air or vice-versa and the business relationship ended. With this loss, they lost the business of Belks Department stores, business controlled by Triangle. Teils Express was a carrier that interlined freight with Land Air traffic destined from New York to New England. Teils stopped using Land Air because of service problems at the Springfield terminal. Other companies who supplied freight that was handled by Springfield whose business was lost are Onmiglobe Corp., Bullett Freight Systems, Quickie Manufacturing,

Land Air also terminated a contract with Airborne Express, which resulted in the layoffs of thirty Land Air drivers, a dispatcher and facility manager. The termination occurred because the operation was not profitable. A new operator took over this operation and hired back all the laid off former Land Air employees.³

In June Spencer and Hemenway began discussing layoffs as a way of confronting the business decline. Spencer wanted to know how many people he could cut and still perform necessary duties. Hemenway reported back that he could probably cut five dockworker positions and two to three drivers. Spencer said to go ahead and make the cuts. Terminated former Terminal Manager James Walpole testified that he was aware in late June and early July that Hemenway and Spencer were planning to lay off employees. He was not aware of Union activity in this time frame. Walpole was fired from Land Air and one would certainly think he would not hesitate to testify to earlier knowledge of Union activity if that were the case.

After all the layoffs and other cuts in expenses and methods of operations, it was estimated the payroll reductions would save about \$8000 a week. In fact, the Company achieved a break-even situation in Springfield by year's end. Spencer testified that he would have wanted to cut more positions at Springfield in the June-July period but lived with what Hemenway told him he needed. Spencer decided that he wanted to terminate Walpole and told Operations Manager, Mac Savage of his displeasure with Walpole's lack of action to address the economic problems at the Springfield terminal. It was decided to remove him. There was a delay in laying off the other employees while they decided how to get rid of Walpole.

On or before July 10, Hemenway had determined to layoff employees Mechanic Eric Couch, Dock Worker Jessie Williams, Dock Worker Milton Banks, Dock Worker Isaiah Crepps, Dock Worker Peter Goodreau, Driver Marcus Benbow and Driver Michael Krutka. Hemenway testified that Krutka and Benbow were the two least senior drivers at the terminal. It was

³ In late July 2001, Respondent changed the Albany area responsibility from Springfield to Windsor, Vermont. Hemenway testified that his change was made because the ultimate destination of the Albany freight was mostly Vermont locations. It made no sense to him to truck the freight to Springfield, off load it and reload it to ship to Vermont. This change in area responsibility resulted in no layoffs at Springfield. The change occurred after the decision to layoff had been made.

decided to layoff Couch as the Springfield terminal does not have a maintenance facility and Couch's usefulness as a mechanic was very limited. Layoffs of drivers and dockworkers were to

be by seniority. General Counsel questions the veracity of this assertion pointing out that in an affidavit given the Board with the respect to the 1999 campaign, Hemenway stated that seniority was not a factor in deciding to lay off employees. General Counsel also points out that seniority is not mentioned in the Employee Handbook in deciding which employees to keep or promote. General Counsel also pointed out that a dock aide, Kelly Leary, has a seniority date junior to Goodreau, but was not laid off.

Hemenway testified that after the 1999 campaign it was determined that layoffs in the future would be by seniority to protect more experienced employees. Hemenway testified that at the time of layoffs, dock aide Kelly Leary was a casual employee and did not have a schedule, working only when needed. He was hired to work on their "Hallmark Cards" account which is only operational around holidays such as fathers' day, Christmas, etc. Though on the payroll there is no expectation of regular work and he may work a day a week or none. Payroll records show Leary working from 15 to forty hours a week during the summer of 2001. He is still employed. As was the case with Goodreau and Krutka, all employees laid off at Springfield in July 2001 have been offered reinstatement. They were called back based on reverse seniority.

Hemenway testified that the decisions to lay off and who would be laid off were made prior to gaining knowledge of Union activity and were solely related to business conditions. Hemenway recalls Goodreau handing him a letter on July 13, 2001, in which Goodreau and Krutka are named as Union organizers. Hemenway testified that this was the first time he learned of Union activity at the terminal. Spencer's testimony about when he learned of the Union activity is the same.

Laurie Phillips is a second shift operations assistant for Land Air and has been employed for two years. Phillips testified that work slowed at the terminal from 2000 to 2001 causing her hours to be cut by one to two hours a day during the summer of 2001. William Moore testified that from his observation of the quantity of freight handled, that business dropped off in 2001. He testified that Spencer told the Springfield employees in the spring of 2001 that they would not be getting wage increases because of poor business conditions.⁴ Moore believed that the Company's business began declining in February 2001. Driver George Patullo testified that in the spring of 2001 business was very slow and the employees were concerned about it.

Dock worker Martin Patry testified that business slowed in the summer of 2001. Driver Stephen Forrest testified that the Respondent's business in 2001 was down quite a bit from 2000. The downturn started in early 2001. Driver Michael Allard testified that the level of business in 2000 was so slow that it was scary. Driver Steven Timbro testified that business slowed down quite a bit in the early spring of 2001. According to him, business was just beginning to pick up at the time he gave testimony in June 2002. Christine Catherine Moore works in inside sales for Land Air and testified that business, beginning at the first of 2001 dropped significantly during that year. It did not pick up until February or March of 2002. She said she laid off three people in the office in January or February 2001 due to a lack of work and the introduction of a new computer. Supervisor Roulston described business in 2001 as very

⁴ I believe this information was actually given when Spencer visited the terminal on July 10 and spoke to employees.

slow when compared to 2000. 2000 was a busy year and after the beginning of 2001, things slowed.

Conclusion with respect to the alleged violations

For reasons given above, I have discredited the evidence relating to each alleged violation of Section 8(a)(1) and the Objection relating to electioneering. I can find no credible evidence to support the Objection that alleges that Respondent threatened and did cancel

existing benefits by saying that the Employer would bargain from scratch. The evidence adduced by Respondent overwhelmingly supports my finding that the discredited testimony relating to the Section 8(a)(1) violations and the electioneering Objection was untrue.

To establish that an employee was disciplined or discharged in violation of Section 8(a)(3) of the Act, the General Counsel must persuade, by a preponderance of the evidence, that an employee's protected conduct was a motivating factor in the employer's decision. See *Wright Line*, 251 NLRB 1083 (1980); see also *Manno Electric*, 321 NLRB 278, 289 fn. 12 (1996). The elements commonly required to support a prima facie showing of discriminatory motivation ... are union activity, employer's knowledge, timing, and employer animus." *Best Plumbing Supply*, 310 NLRB 143 (1993). Based on the credible evidence of record, I find that the General Counsel has failed to make such a prima facie showing. I have found that the decisions to discipline Goodreau, to place Krutka on full workers' compensation, to layoff and who was to be laid off were made before the Respondent became aware of Union activity in general and of Goodreau's and Krutka's Union involvement in particular. Additionally, based on the credible evidence of record, there is no showing of animus. The Respondent might not have desired the Union, but I cannot find that it did anything unlawful to further this desire. I find that the Respondent's economic reasons for having the layoffs were legitimate and justified the layoffs. I will recommend that the Complaint be dismissed, the Objections dismissed and the election of October 18, 2001 be certified.

Conclusions of Law

1. Land Air Express, Inc. is an employer within the meaning of Section 2(2), (6) and (7) of the Act.

2. International Brotherhood of Teamsters, Local 404, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent has not committed any of the unfair labor practices alleged in the Complaint.

4. The Respondent has not engaged in the conduct alleged by the Union's Objections 1 and 6 in Case 1-RC-21404.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁵

⁵ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

The Complaint is dismissed, the Objections found without merit, and the Election in
5 Case 1-RC-21404 is Ordered to be certified.

Dated, Washington, D.C. March 24, 2002

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Wallace H. Nations
Administrative Law Judge